U.S. Customs Service

General Notice

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MOTOR VEHICLE SUSPENSION BALL JOINTS

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of proposed revocation of a ruling letter, and treatment relating to tariff classification of motor vehicle suspension ball joints.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of motor vehicle suspension ball joints under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before (30 days from the date of publication of notice in the Customs Bulletin).

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

U.S. Customs Service

General Notice

PROPOSED REVOCATION OF RULING LETTER
AND TREATMENT RELATING TO THE CLASSIFICATION OF
SHOE PROTECTOR BAGS

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of proposed revocation of a tariff classification ruling and revocation of treatment relating to the classification of shoe protector bags.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification of shoe protector bags under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before (30 days from the date of publication of notice in the Customs Bulletin).

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Ann Minardi, Textile Branch, at (202) 927-2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended

and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), TariffAct of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of shoe protector bags. Although in this notice, Customs is specifically referring to one ruling, Headquarters Ruling (HQ) HQ 950281, dated February 3, 1993, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

In HQ 950281, Customs ruled that merchandise identified as shoe protector bags designed to store shoes or protect them during travel are classified as "other made up articles" under subheading 6307.90.9986, HTSUS. This ruling letter is set forth as "Attachment

A" to this document. Since the issuance of this ruling, Customs has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that these items should be treated as "similar containers" under subheading 4202.92.3031, HTSUS, which accurately describes the merchandise.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 950281 dated February 3, 1993, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HQ 964428 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action consideration will be given to any written comments timely received.

Dated: September 18, 2000

JOHN E. ELKINS (for John Durant, Director Commercial Rulings Division)

[Attachments]

ATTACHMENT A

HQ 950281 February 3, 1993 CLA-2; CO:R:C:T 950281 CH Category: Classification Tariff No.: 6307.90.9986

MICHAEL SMERLING L.C. INDUSTRIES, INC. 1650 W. Irving Park Road Chicago, IL 60613

Re: Revocation of NYRL 858166; tariff classification of shoe protector bags from China under Heading 6307, not 4202; shoe pouch; shoe bag; article used for storage/protection, not travel.

DEAR MR. SMERLING:

New York Ruling Letter (NYRL) 858166, dated November 5, 1990, concerned the classification of shoe protector bags under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have had occasion to review this ruling and find that the classification of said merchandise under Subheading 4202.92.3030, HTSUSA, is in error.

Facts

The merchandise at issue are shoe protector bags designed to store shoes, or protect them during travel. They are closed by means of a cotton rope-like draw-string.

In NYRL 858166, this merchandise was classified under Subheading 4202.92.3030, HTSUSA, which provides for travel, sports and similar bags, with outer surface of textile materials.

Issue:

Whether the subject merchandise is properly classified under Subheading 4202.92, which provides for travel, sports and similar bags, or Subheading 6307.99, which provides for other made-up textile articles?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes. Where goods cannot be classified on the basis of GRI 1, the remaining GRI will be applied in order.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the EN when interpreting the HTSUSA.

The EN to Heading 6307 state that it includes in particular:

(5) Domestic laundry or shoe bags, stocking, handkerchief or slipper sachets, pyjama or nightdress cases and similar articles. (Emphasis added).

(6) Garment bags (portable wardrobes) other than those of heading 42.02.

Thus, it is clear that shoe bags are to be treated as other made up articles. Moreover, the exemplars contained in (5) and (6) suggest that there is a class of containers or bags used for storing various personal effects which are not covered more specifically in Section XI or elsewhere in the Nomenclature.

On the other hand, Chapter 42, HTSUSA, specifically encompasses travel goods. Heading 4202 describes containers commonly used to transport personal effects. These items include:

Trunks, Suit-Cases, Vanity-Cases, Executive-Cases, Briefcases, School Satchels, Spectacle Cases, Binocular Cases, Camera Cases, Musical Instrument Cases, Gun Cases, Holsters and Similar Containers; Travelling- Bags, Toilet Bags, Rucksacks, Handbags, Shopping-Bags, Wallets, Purses, Map-Cases, Cigarette-Cases, Tobacco- Pouches, Tool Bags, Sports Bags, Bottle-Cases, Jewellery Boxes, Powder-Boxes, Cutlery Cases and Similar Containers.

Unfortunately, these competing provisions may overlap. For example, one may use a shoe bag as a protective sheath to protect both shoes and other clothing articles during the course of travel. Similarly, items such as cigarette cases and jewelry boxes may be used as storage cases completely unrelated to their use in travel. When these provisions overlap we must first rely on the chapter headings and the EN to help us determine which classification is proper for a particular item.

In this instance, the EN to Heading 6307 specifically state that shoe bags are to be classified as other made up textile articles. Hence, the subject merchandise is properly classified under Heading 6307.

Holding:

The subject merchandise is classifiable under Subheading 6307.90.9986, HTSUSA, which provides for other made up articles, other, other, other. The applicable rate of duty is 7% ad valorem.

In order to insure uniformity in Customs classification of this merchandise and eliminate uncertainty, we are revoking NYRL 858166. However, if after your review you disagree with the legal basis for our decision, we invite you to submit any arguments you might have with respect to this matter for our review. Any submission you wish to make should be received within 30 days of this letter.

This notice to you should be considered a revocation of NYRL 858166 under 19 C.F.R. \$177.9(d)(1). It is not to be applied retroactively to NYRL 858166 (19 C.F.R. \$177.9(d)(2)) and will not, therefore, affect past transactions for the importation of

your client's merchandise under that ruling. However, for the purposes of future transactions in merchandise of this type, NYRL 858166 will not be valid precedent. We recognize that pending transactions may be adversely affected by this modification, in that current contracts for importations arriving at a port subsequent to this decision will be classified pursuant to it. If such a situation arises, your client may, at its discretion, notify this office and apply for relief from the binding effects of this decision as may be warranted by the circumstances. However, please be advised that in some instances involving import restraints, such relief may require separate approvals from other government agencies.

Sincerely,

JOHN DURANT, DIRECTOR Commercial Rulings Division

ATTACHMENT B

CLA-2 RR:CR:TE 964428 ASM Category: Classification Tariff No.: 4202.92.3031

Mr. Michael Smerling L.C. Industries, Inc. 1650 W. Irving Park Road Chicago, IL 60613

RE: Proposed Revocation of HQ 950281; classification of shoe protector bags

Dear Mr. Smerling:

This is in regard to Headquarters Ruling Letter (HQ) 950281 issued to you on February 3, 1993, by this office in reply to your request for a tariff classification ruling of shoe protector bags. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes HQ 950281 by providing the correct classification for the shoe protector bags.

Facts:

The subject goods are identified as shoe protector bags which have been designed to store shoes or protect them during travel. They are closed by means of a cotton rope-like drawstring.

In HQ 950281 Customs found the subject goods classifiable as "Other made up articles" within subheading 6307.90.9986, Harmonized Tariff Schedule of the United States.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpre-

tation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive, are used to determine the proper interpretation of the HTSUSA by providing a commentary on the scope of each heading of the HTSUSA. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Customs has previously ruled that drawstring textile shoe bags or pouches are classifiable under heading 6307, HTSUSA, as "Other made up articles." However, these rulings did not involve merchandise specifically intended/marketed for travel purposes. See Headquarters Ruling Letter (HQ) 084257, dated July 18, 1989; HQ 085961, dated March 9, 1990; HQ 086206, dated April 13, 1990; HQ 088411, dated April 23, 1991. The EN to 6307 specifies that the heading covers those made up articles of textile material "...which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature" and particularly including: (5)"... shoe bags." However, we note that the EN excludes (b) "...Travel goods ... and all similar containers of heading 4202" (emphasis supplied). In the instant case, the subject shoe bags are excluded from classification under heading 6307, HTSUSA, because they are designed as a travel good.

Heading 4202, HTSUSA, specifically covers various cases and containers, and provides as follows:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.

Additional U.S. Notes to Chapter 42 state, in relevant part: "1. For the purposes of heading 4202, the expression 'travel, sports and similar bags' means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel...".

The EN to 4202 indicates that the heading covers only the articles specifically named and similar containers. While "shoe bags" are not specifically named in heading 4202, HTSUSA, the subject bags are designed for travel. Accordingly, they are similar to the travel bags specified in 4202. However, in order to classify the subject goods as "similar" under 4202, HTSUSA, we must look to factors, which would identify the merchandise as being *ejusdem generis* (of a similar kind) to those specified in the provision.

In the case of *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867(1994), aff'd. 69 F. 3d 495 (1995), the Court of Appeals stated as follows:

As applicable to classification cases, ejusdem generis requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated eo nomine [by name] in order to be classified under the general terms.

In classifying goods under the residual provision of "similar containers" of 4202, HTSUSA, the Court of Appeals affirmed the trial court's decision and found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA., *i.e.*, "...to organize, store, protect and carry various items."

The subject merchandise is designed to store or protect shoes during travel. As such, in applying the criteria from the *Totes* case (*supra*) the travel shoe bags are classifiable under 4202, HTSUSA, because they share with the containers listed *eo nomine*, the essential characteristics of storing and protecting shoes while traveling. Recently, in the case of *Jewelpak Corp. v. United States*, 97 F. Supp. 2d 1192, 2000 Ct. Intl. Trade LEXIS 40; Slip Op. 2000-39 (April 13, 2000), in a footnote to the decision, the Court determined that the aforementioned *Totes* (*supra*) criteria, "...to organize, store, protect and carry various items", may be applied in the alter-

native. The court stated that an article need not have all four of the listed characteristics in order to be classifiable as a "similar container" of heading 4202, HTSUSA; it is enough that it fulfill one of the enumerated criteria. While it could be argued that the subject shoe bags also serve to organize and carry shoes during travel, in classifying the articles as "similar containers" under 4202, pursuant to Jewelpak Corp. (supra), we need only note that the shoe bags are designed for storing or protecting shoes during travel.

Three recent Headquarters Rulings HQ 964197, HQ 964198, HQ 964353, each dated August 18, 2000, provide the basis for the subject revocation. All three rulings classified drawstring polar fleece shoe pouches, designed to store and protect shoes during travel, as "similar containers" under subheading 4202.92.3031, HTSUSA The polar fleece shoe pouches were specifically designed for organizing, storing, protecting and carrying shoes, thus satisfying the *Totes* (supra) criteria for the rule of ejusdem generis under 4202, HTSUSA. Inasmuch as the subject shoe bags are also a textile drawstring type bag designed to store and protect shoes during travel, it was determined that the subject ruling, HQ 950281, must be revoked and the merchandise properly classified under heading 4202, HTSUSA.

HQ 950281 is hereby revoked.

The subject merchandise is correctly classified in subheading, 4202.92.3031, HTSUSA, which provides for, "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other, Other: Of man-made fibers: Other." The general column one duty rate is 18.6 percent ad valorem. The textile category is 670.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the Status on Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Cus-

toms office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Sincerely,

John Durant, Director Commercial Rulings Division "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of motor vehicle suspension ball joints. Although in this notice Customs is specifically referring to one ruling, NY 818205, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY 818205 dated February 8, 1996, set forth as Attachment A to this document, Customs classified motor vehicle suspension ball joints under subheading 8708.99.73, HTSUS. It is now Customs position that the motor vehicle suspension ball joints are classified under subheading 8708.99.70, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY 818205 and any other ruling not specifically identified in order to

reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 964496. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: September 18, 2000

JOHN E. ELKINS (for John Durant, Director Commercial Rulings Division

Attachments

ATTACHMENT A

NY 818205 February 8, 1996 CLA-2-87:RR:NC:MA:101 818205 Category: Classification Tariff No.: 8708.99.7360

Mr. Thomas P. Sprowl NIPPON EXPRESS U.S.A., INC. 410 Airpark Center Drive Nashville, TN 37217

Re: The tariff classification of suspension ball joints from Japan

DEAR MR. SPROWL:

In your letter dated January 8, 1196 you requested a tariff classification ruling. The item is a suspension ball joint for use in motor vehicles. The suspension ball joint is placed between the suspension arm and the steering knuckle. Generally, the socket is pressed into the suspension arm, and the ball stud is fitted to the steering knuckle using the bolt and nut; then the ball stud is fastened with the nut. This ball joint fastens the steering knuckle (tire) and the suspension arm, enabling rocking and sliding in such a manner that twist force caused by tire motion (cornering and up-and-down movement) does not propagate to the suspension arm and other components.

When the vehicle is cornering, the ball stud slides with cornering of the tire, and proper cornering angle between the tire and the suspension arm can be obtained by smoothly moving the tire. The ball joint is on the rotational center of the tire. When the tire bounds or rebounds, the tire can ;move up and down smoothly

In the case of double wishbone type suspension, the upper or lower ball joint also has the role of suspending the body.
Part numbers are #40160-88M02 and #40160-50Y02

The applicable subheading for the suspension ball joints will be 8708.99.7360, Harmonized Tariff Schedule of the United States (HTS), which provides for other parts of steering systems. The rate of duty will be 2.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-466-5667.

Sincerely,

ROGER J. SILVESTRI Director National Commodity Specialist Division

ATTACHMENT B

HQ 964496 CLA-2 RR:CR:GC 964496 GOB Category: Classification Tariff No.: 8708.99.70

Thomas P. Sprowl Nippon Express U.S.A., Inc. 410 Airpark Center Drive Nashville, TN 37217

Re: Motor vehicle suspension ball joints; NY 818205 revoked

DEAR MR. SPROWL:

This is with respect to New York Ruling Letter ("NY") 818205, issued to Nippon Express U.S.A., Inc. by the Customs National Commodity Specialist Division, New York, on February 8, 1996. In that ruling, a suspension ball joint for use in motor vehicles was classified under subheading 8708.99.73, Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Facts.

The motor vehicle suspension ball joint part numbers are 40160-88M02 and 40160-50Y02.

The suspension ball joint is placed between the suspension arm and the steering knuckle. The socket is pressed into the suspension arm, and the ball stud is fitted to the steering knuckle using the bolt and nut. The ball stud is then fastened with a nut. This ball joint fastens the steering knuckle (tire) and the suspension arm, enabling rocking and sliding in such a manner that the twist force caused by tire motion (cornering and up-and-down movement) does not propagate to the suspension arm and other components.

When the vehicle is cornering, the ball stud slides with the cornering of the tire, and the proper cornering angle between the tire and the suspension arm can be obtained by smoothly moving the tire. The ball joint is on the rotational center of the tire

In the case of a double wishbone type of suspension, the upper or lower ball joint also has the role of suspending the body.

Issue

What is the correct tariff classification of the subject motor vehicle suspension ball joints?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

8708 Parts and accessories of the motor vehicles of headings 8701

to 8705:

Other parts and accessories:

8708.99 Other

Other

Other

8708.99.70 Parts for suspension systems

8708.99.73 Parts for steering systems

The subject motor vehicle suspension ball joints are clearly parts of the suspension system of a motor vehicle.

Accordingly, they are classified in subheading 8708.99.70, HTSUS.

Holding:

The subject motor vehicle suspension ball joints are classified in subheading 8708.99.70, HTSUS.

Effect on Other Rulings:

NY 818205 is revoked.

Sincerely,

JOHN DURANT, DIRECTOR Commercial Rulings Division

U.S. Customs Service

General Service

REVOCATION OR MODIFICATION OF RULING LETTERS AND TREATMENT RELATING TO THE APPLICABILITY OF SUBHEAD-ING 9802.00.50 TO CERTAIN ARTICLES DECORATED ABROAD

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation or modification of ruling letters and treatment relating to the eligibility of certain articles which are exported for decorating operations and returned for a partial or complete duty exemption under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying one ruling letter and revoking four ruling letters pertaining to the applicability of subheading 9802.00.50, HTSUS, to certain articles which are exported for decorating operations and returned to the U.S. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on August 9, 2000. One comment was received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after (60 days after publication in the Customs Bulletin).

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification & Marking Branch, (202) 927-1116.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compli-

ance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLE-TIN on August 9, 2000, Volume 34, Number 32, proposing to revoke or modify (as applicable) five rulings pertaining to the applicability of subheading 9802.00.50, HTSUS, to certain articles that are decorated abroad and returned. One comment was received in response to the notice. Although the comment agrees with the proposed actions, it recommends that nine other ruling letters also be modified or revoked. The rulings identified in the comment are: Headquarters Ruling Letters (HRLs) 554985 dated February 6, 1989, 555021 dated July 1, 1988, 555249 dated June 16, 1989, 555561 dated February 7, 1990, 555760 dated November 16, 1990, 556030 dated August 29, 1991, 556381 dated March 2, 1992, 556635 dated May 27, 1992, and 554974 dated July 27, 1988. Customs has reviewed these rulings, all of which involve the applicability of subheading 9802.00.50, HTSUS, to articles that are exported for decorating operations and returned. However, in Customs opinion, there is insufficient information in the record relating to those rulings for Customs to determine that the decorating operations qualify as acceptable alterations under this tariff provision. For example, there is no information that would establish that the specific articles referenced in those rulings, in their decorated and undecorated states, are marketed to consumers in the same channels of trade for the same use. This would constitute persuasive evidence that the articles, in their condition as exported from the U.S., are complete for their intended use and, therefore, that the foreign decorating operation is not a necessary step in the preparation or manufacture of finished articles. Accordingly, these rulings are not revoked or modified.

Pursuant to section 625(c)(1), TariffAct of $1930\,(19\,U.S.C.\,1625(c)(1))$, Customs is modifying or revoking (as applicable) HRLs $071770,\,555510,\,557770,\,558935$ and 560168 to reflect the proper classification of the merchandise under subheading $9802.00.50,\,HTSUS,\,pursuant$ to the analysis set forth in proposed HRLs $561782,\,561783,\,561781,\,and\,561770.$ Additionally, pursuant to $19\,U.S.C.\,1625(c)(2),\,Customs$ is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HRL 561782 revoking HRLs 071770 and

555510, HRL 561783 revoking HRL 557770, HRL 561781 modifying HRL 558935, and HRL 561770 revoking HRL 560168 are set forth as Attachments A through D, respectively, to this document.

As stated in the proposed notice, these revocations and modification will cover any rulings involving substantially identical transactions which may exist but which have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: September 19, 2000

Myles Harmon, (for John Durant, Director Commercial Rulings Division)

[Attachments]

[Attachment a]

HQ 561782 September 19, 2000 CLA-2 RR:CR:SM 561782 CW Category: Classification Tariff No.: 9802.00.50

Mr. T.A. Schofield A.N. DERINGER, Inc. R.D. #1 - Box W-432 Alexandria Bay, New York 13607-9798

RE: Revocation of HRLs 071770 and 555510; dyeing of carpet tiles abroad; alteration; Amity Fabrics

DEAR MR. SCHOFIELD:

This is in reference to Headquarters Ruling Letter (HRL) 071770 dated February 24, 1984, and HRL 555510 dated January 30, 1990, which were issued to you on behalf of Milliken Industries of Canada Ltd. concerning the eligibility of carpet tiles which are dyed in Canada and returned to the U.S. for a partial duty exemption under item 806.20, Tariff Schedules of the United States (TSUS), and its successor provision, subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed HRLs 071770 and 555510 and have determined that their conclusion that the returned dyed carpet tiles are ineligible for reduced duty treatment under item 806.20, TSUS, or subheading 9802.00.50, HTSUS, is incorrect. Therefore, HRLs 071770 and 555510 are revoked for the reasons set forth below.

Facts:

Milliken Industries manufactures carpet tiles at its plant in LaGrange, Georgia. The "basic color" carpet tiles are shipped to the Milliken plant in Deseronto, Ontario, Canada, where they are unpacked and run through a machine which applies a dye to the carpet tile in a selected design and color. The decorated carpet tile is then washed, dried and repackaged for shipment to the U.S. You state that the exported "basic color" carpet tiles are sold to consumers in that condition and, in support of that contention, you cite the P 3000 and P 3020 carpet tiles as examples. The P 3000 basic carpet tile is exported to Canada for processing into the P 3020 dyed carpet tile. As evidenced by the 1988/1989 Milliken Pattern Listing pamphlet, both carpet tiles are marketed and sold to consumers as separate products.

In HRL 071770, Customs determined that applying a dye to the carpet tiles in a selected design and color was an operation which exceeded the scope of a repair or alteration under item 806.20, TSUS. It was stated that only repairs or alterations performed abroad on completed goods qualify under the statute. Thus, Customs held that, as the foreign dyeing operation amounted to a continuation of the manufacture of the carpet tiles, the returned articles were ineligible for item 806.20, TSUS, treatment. HRL 555510, which reconsidered HRL 071770, similarly held that the dyeing operation constituted a finishing operation rather than a qualifying alteration under subheading 9802.00.50, HTSUS. Thus, HRL 555510 affirmed the holding in HRL 071770.

Issue.

Whether the operations performed on the U.S. carpet tiles in Canada qualify as a repair or alteration under subheading 9802.00.50, HTSUS.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a partial or complete duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 181.64 (for articles returned from Canada or Mexico) or section 10.8 (for articles returned from any other country),

Customs Regulations (19 CFR 181.64 and 10.8), are satisfied. Section 181.64(a), Customs Regulations, states that:

'repairs or alterations' means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

Court cases considering the applicability of subheading 9802.00.50, HTSUS, and its precursor provisions (item 806.20, Tariff Schedules of the United States (TSUS), and, before that, paragraph 1615(g), Tariff Act of 1930), have held that this tariff provision is inapplicable where: (1) the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture.

In Guardian Industries v. United States, 3 CIT 9 (1982), the Court of International Trade stated that, in construing "the tariff provision for repairs and alterations performed abroad, the focus is upon whether the exported article is 'incomplete' or 'unsuitable for its intended use' prior to the foreign processing." At issue in Guardian Industries was the question of whether subjecting U.S.-produced annealed glass to a tempering process in Canada to create glass for sliding glass patio doors qualifies as an "alteration" under item 806.20, TSUS. The court noted that glass must be tempered (i.e., strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it may be marketed for use in sliding glass patio doors. In concluding that the tempering process was not an "alteration", the court stated that "the exported articles of raw annealed glass were not 'completed articles' since they were entirely unsuitable for their intended use" as sliding glass patio doors and required a manufacturing process to make them complete. The court further concluded that, because the tempering of the annealed glass transformed the glass in name, use, performance characteristics and tariff classification, the operation created a new and different commercial article.

Similarly, in *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F.Supp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as griege goods for heat-setting, chemical-scouring, dyeing, and treating with chemicals, were eligible for the partial duty exemption available under item 806.20, TSUS, when returned to the United States. The U.S. Court of Customs and Patent Appeals found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated (66 CCPA at 82) that:

... repairs and alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles. In the instant situation, the operations performed in Canada comprise further processing steps which are performed on unfinished goods and which lead to completed articles, i.e., the finished fabrics, and, therefore, the processing cannot be considered alterations.

In Amity Fabrics, Inc. v. United States, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of paragraph 1615(g) of the Tariff Act of 1930.

In Royal Bead Novelty Co. v. United States, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated

beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, TSUS.

In HRL 557161, dated June 28, 1993, Customs considered whether wooden interior shutters exported to Mexico for certain operations, including the application of several coats of paint or stain, were eligible for subheading 9802.00.50, HTSUS, treatment when returned to the U.S. The manufacturer also sold shutters in an "unfinished" condition; that is, without any paint or stain applied. Customs found that the shutters in their condition as exported from the U.S. (unfinished) were complete for their intended use to control light, ventilation, and to provide privacy, and that the painting or staining was not a necessary step in the production of the shutters. Therefore, Customs determined that the returned shutters were eligible for the partial duty exemption under subheading 9802.00.50, HTSUS. In making that determination, Customs also modified a past ruling, HRL 555093, dated April 26, 1989, to the extent that it disallowed subheading 9802.00.50, HTSUS, treatment for wooden furniture kits also sold in an unfinished condition and sent abroad for staining and lacquering.

Although Customs issued a notice in the September 6, 1995, Customs Bulletin (Volume 29, Number 36) proposing to modify HRL 557161 to reflect that the painting or staining abroad of unfinished interior shutters, and the staining and lacquering abroad of furniture kits under HRL 555093, would not be considered alterations under subheading 9802.00.50, HTSUS, this proposed action was withdrawn in a notice published on December 17, 1997, in the Customs Bulletin, Volume 31, Number 51. Thus, it remains Customs position that the painting or staining of the shutters in HRL 557161 and the staining and lacquering of the wooden furniture kits in HRL 555093 constitute permissible alterations under subheading 9802.00.50, HTSUS.

HRL 560325 dated January 27, 1998, concerned the eligibility for subheading 9802.00.50, HTSUS, treatment of U.S.-origin glass stemware which was decorated by a silkscreening process with a pictorial winter scene abroad and returned. The stemware was offered for sale both in its decorated and undecorated state. In holding that the decorating process constituted an alteration, Customs stated that:

. . . the processing abroad results only in a change to the appearance of the stemware, and does not alter the function, character or identity of the exported articles. The merchandise sent is finished white wine stemware, marketable in the condition exported, and what is returned is the same merchandise, available to the same class of customers, albeit enhanced in appearance by a decorative winter scene.

In HRL 555744 dated January 28, 1991, Customs considered whether tipping, flagging and/or dyeing operations performed abroad on bunches of nylon bristles (for paint brushes) qualified as an alteration under subheading 9802.00.50, HTSUS. According to the facts in that ruling, the foreign processing consisted of tipping, which caused the ends of the bristles to become more pointed, or flagging, which caused the ends to split. Sometimes the bristles were also dyed. The ruling stated that the operations were performed on the bristles "ostensibly to give them the appearance of natural hog bristles so as to enhance their marketability." The facts also indicated that the bristles as exported from the U.S. were ready to be incorporated into finished paint brushes, and that both the "altered" and "unaltered" bristles were used in the manufacture of paint brushes.

Customs determined in HRL 555744 that the foreign processing constituted acceptable alterations. Specifically in regard to the dyeing of the bristles, we stated that this operation is distinguishable from the dyeing of the greige fabric involved in the *Dolliff* case because fabric in the greige is, by definition, unfinished merchandise requiring processing to render it suitable for its purpose, while the bristles in HRL 555744 were suitable for their intended use (incorporation into paint brushes) in their condition as exported and, in fact, were so used. Additionally, we stated that the dyeing did not affect the quality, texture, character or performance characteristics of the bristles.

Finally, HRL 561383 dated June 15, 1999, concerned whether certain imported Egyptian yarns, which are exported to Canada for dyeing, may receive subheading 9802.00.50, HTSUS, treatment when returned to the U.S. Information submitted

by the requestor indicated that many customers use the same Egyptian yarns for knitting, weaving or sewing in their undyed condition, and that only in situations where the yarns are to be knit or woven to create patterned or jacquard fabrics is it necessary to dye the yarns to color first. Customs found that the dyeing operation was not an "intermediate processing operation which is performed as a matter of course in the preparation or manufacture of finished" yarns. Further, we stated that the dyeing clearly does not destroy the identity of the exported yarns or create a new or different article of commerce. Thus, it was determined that the dyeing operation qualified as an alteration.

We believe that the holdings in HRLs 557161, 560325, 555744 and 561383 are controlling with respect to the facts in the instant case. "Basic color" carpet tiles are exported to Canada for dyeing in selected designs and colors. The facts submitted in the case indicated that both the carpet tiles in their condition as exported to Canada and the returned decorated tiles are marketed and sold to consumers as separate products for the same use. We view this as persuasive evidence that the "basic color" carpet tiles are complete for their intended use as floor coverings and that, therefore, the foreign dyeing/decorating operation is not a necessary step in the preparation or manufacture of finished tiles. Moreover, while the application of dyed designs and colors to the carpet tiles in Canada clearly imparts new decorative characteristics to the articles, this change in the appearance of the articles does not result in the loss of the goods' identity or the creation of new articles with a different commercial use. The foreign processing does not significantly change the quality, character or performance characteristics of the tiles. Therefore, we find that the foreign processing operation performed on the carpet tiles in Canada constitutes an alteration within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information presented, we find that the foreign dyeing operation, as described above, performed abroad on exported carpet tiles qualifies as an alteration under subheading 9802.00.50, HSTSUS. Therefore, the returned decorated carpet tiles are entitled to the partial duty exemption under this tariff provision, provided the documentation requirements of 19 CFR 181.64 are met.

Consistent with this ruling, HRLs 071770 and 555510 are hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Sincerely,

Myles Harmon (for John Durant, Director Commercial Rulings Division)

[Attachment b]

HQ 561783 September 19, 2000 CLA-2 RR:CR:SM 561783 CW Tariff No.: 9802.00.50

Mr. Thomas O. Powers 4180 Huanui Street Honolulu, HI 96816

RE: Revocation of HRL 557770; painting decorative designs on imitation fingernails abroad; alteration

DEAR MR. POWERS:

This is in reference to Headquarters Ruling Letter (HRL) 557770 dated February 24, 1994, which was issued to you concerning the applicability of the partial duty exemption under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to painted plastic fingernails from Indonesia. We have reviewed this ruling and have determined that its conclusion that subheading 9802.00.50, HTSUS, is inapplicable to the returned decorated fingernails is incorrect. Therefore, HRL 557770 is revoked for the reasons set forth below.

Facts

Plastic fingernails are produced in the U.S. by Allied Mold & Die Corp., California. The nails are available in assorted solid colors and are sold in sets of 24. You purchase the nails for approximately two cents per nail and send them to Indonesia, where they are painted with decorative designs. The cost of the painting is approximately two cents per nail. The decorated nails are then returned to the U.S., where they are packaged and sold as a decorative, wearable accessory.

In HRL 557770, Customs held that the foreign decorative painting constitutes an operation which exceeds an alteration under subheading 9802.00.50, HTSUS. In support of this conclusion, Customs stated that the design painting imparts substantially new and different characteristics to the fingernails, that the fingernails as exported to Indonesia are incomplete for their intended use, and that the foreign processing is a necessary step in the production of the final article.

Issue:

Whether the U.S.-origin imitation fingernails which are painted with decorative designs in Indonesia are entitled to the partial duty exemption under subheading 9802.00.50, HTSUS, when returned to the U.S.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a partial duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 10.8, Customs Regulations (19 CFR 10.8), are satisfied. Court cases considering the applicability of subheading 9802.00.50, HTSUS, and its

Court cases considering the applicability of subheading 9802.00.50, HTSUS, and its precursor provisions (item 806.20, Tariff Schedules of the United States (TSUS), and, before that, paragraph 1615(g), Tariff Act of 1930), have held that this tariff provision is inapplicable where: (1) the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture.

In Guardian Industries v. United States, 3 CIT 9 (1982), the Court of International Trade stated that, in construing "the tariff provision for repairs and alterations performed abroad, the focus is upon whether the exported article is 'incomplete' or 'unsuitable for its intended use' prior to the foreign processing." At issue in Guardian Industries was the question of whether subjecting U.S.-produced annealed glass to a tempering process in Canada to create glass for sliding glass patio doors qualifies as an "alteration" under item 806.20, TSUS. The court noted that glass must be tempered (i.e., strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it may be marketed for use in sliding glass patio doors. In concluding that the tempering process was not an "alteration", the court stated that "the exported articles of raw annealed glass were not 'completed articles' since they were entirely unsuitable for their intended use" as sliding glass patio doors and required a manufacturing process to make them complete. The court further concluded that, because the tempering of the annealed glass transformed the glass in name, use, performance characteristics and tariff classification, the operation created a new and different commercial article.

Similarly, in *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F.Supp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as griege goods for heat-setting, chemical-scouring, dyeing, and treating with chemicals, were eligible for the partial duty exemption avail-

able under item 806.20, TSUS, when returned to the United States. The U.S. Court of Customs and Patent Appeals found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated (66 CCPA at 82) that:

... repairs and alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles. In the instant situation, the operations performed in Canada comprise further processing steps which are performed on unfinished goods and which lead to completed articles, i.e., the finished fabrics, and, therefore, the processing cannot be considered alterations.

In Amity Fabrics, Inc. v. United States, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of paragraph 1615(g) of the Tariff Act of 1930.

In Royal Bead Novelty Co. v. United States, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, TSUS.

In HRL 557161, dated June 28, 1993, Customs considered whether wooden interior shutters exported to Mexico for certain operations, including the application of several coats of paint or stain, were eligible for subheading 9802.00.50, HTSUS, treatment when returned to the U.S. The manufacturer also sold shutters in an "unfinished" condition; that is, without any paint or stain applied. Customs found that the shutters in their condition as exported from the U.S. (unfinished) were complete for their intended use to control light, ventilation, and to provide privacy, and that the painting or staining was not a necessary step in the production of the shutters. Therefore, Customs determined that the returned shutters were eligible for the partial duty exemption under subheading 9802.00.50, HTSUS. In making that determination, Customs also modified a past ruling, HRL 555093, dated April 26, 1989, to the extent that it disallowed subheading 9802.00.50, HTSUS, treatment for wooden furniture kits also sold in an unfinished condition and sent abroad for staining and lacquering.

Although Customs issued a notice in the September 6, 1995, Customs Bulletin (Volume 29, Number 36) proposing to modify HRL 557161 to reflect that the painting or staining abroad of unfinished interior shutters, and the staining and lacquering abroad of furniture kits under HRL 555093, would not be considered alterations under subheading 9802.00.50, HTSUS, this proposed action was withdrawn in a notice published on December 17, 1997, in the Customs Bulletin, Volume 31, Number 51. Thus, it remains Customs position that the painting or staining of the shutters in HRL 557161 and the staining and lacquering of the wooden furniture kits in HRL 555093 constitute permissible alterations under subheading 9802.00.50, HTSUS.

HRL 560325 dated January 27, 1998, concerned the eligibility for subheading 9802.00.50, HTSUS, treatment of U.S.-origin glass stemware which was decorated by a silkscreening process with a pictorial winter scene abroad and returned. The stemware was offered for sale both in its decorated and undecorated state. In holding that the decorating process constituted an alteration, Customs stated that:

. . . the processing abroad results only in a change to the appearance of the stemware, and does not alter the function, character or identity of the exported articles. The merchandise sent is finished white wine stemware, marketable in

the condition exported, and what is returned is the same merchandise, available to the same class of customers, albeit enhanced in appearance by a decorative winter scene.

We believe that the holdings in HRLs 557161 and 560325 are controlling with respect to the facts in the instant case. Plastic imitation fingernails produced and sold in the U.S. in assorted solid colors are exported to Indonesia where they are painted with decorative designs. Both the imitation fingernails in their condition as exported and the returned decorated fingernails are marketed to consumers for the same use. We view this as persuasive evidence that the fingernails as exported from the U.S. are complete for their intended use as decorative wearable accessories and, therefore, that the foreign design painting operation is not a necessary step in the preparation or manufacture of finished imitation fingernails. Moreover, while painting decorative designs on the solid-color fingernails clearly imparts new decorative characteristics to the product, this change in the appearance of the articles does not result in the loss of the goods' identify or the creation of a new article with a different commercial use. The foreign processing does not significantly change the quality, character or performance characteristics of the fingernails. Therefore, we find that the foreign decorative design operation constitutes an alteration within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information presented, we find that painting decorative designs on U.S.-made solid color imitation fingernails in Indonesia qualifies as an alteration under subheading 9802.00.50, HSTSUS. Therefore, the returned decoratively painted fingernails are entitled to the partial duty exemption under this tariff provision, provided the documentation requirements of 19 CFR 10.8 are met.

Consistent with the foregoing, HRL 557770 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Sincerely.

Myles Harmon John Durant, Director Commercial Rulings Division

[Attachment c]

HQ 561781 September 19, 2000 CLA-2-05 RR:CR:SM 561781 CW Category: Classification Tariff No.: 9802.00.50

Mr. Andrew P. Vance Barnes, Richardson & Colburn 475 Park Avenue South New York, New York 10016

RE: Modification of HRL 558935; "reembroidery" of lace fabric; alteration

DEAR MR. VANCE

This is in reference to Headquarters Ruling Letter (HRL) 558935 dated January 31, 1995, which was issued to you on behalf of Asiawealth Apparel Inc., concerning the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to "reembroidered" lace. The ruling also addressed the proper

tariff classification of the lace products.

We have reviewed HRL 558935 and believe that the portion pertaining to the applicability of subheading 9802.00.50, HTSUS, to "reembroidered" lace is incorrect. It is this aspect of the ruling that we are modifying for the reasons set forth below. The portion of the ruling relating to the tariff classification of the lace products remains in effect.

Facts:

The lace is made in France and third parties, not related to Asiawealth, import it into the United States. These third parties hire Asiawealth to contract with a Philippine factory to have "rope" (thick thread), or sequins, or beads, or any combination of rope, sequins, and beads, hand embroidered onto the lace. This process is called "reembroidery." The owners of the lace have the fabric "reembroidered" in order to make it more marketable, but maintain that the lace is a totally finished product without the "reembroidery" process and that both the lace and the "reembroidered" lace are sold in the same channels of trade and both are used as ornaments on women's wearing apparel. Asiawealth supplies the rope, sequins, and beads to the Philippine factory where the hand embroidery is performed. The "reembroidered" lace is then exported to the United States.

In HRL 558935, Customs held that the returned "reembroidered" lace is ineligible for subheading 9802.00.50, HTSUS, treatment because:

...the foreign "reembroidery" operation constitutes an operation that exceeds an alteration. Although the lace may be used to ornament woman's apparel whether it has an embroidered design or not, embroidery like printing, silk screening and hand-painting, is considered neither a repair nor an alteration under the provisions of subheading 9802.00.50, HTSUS. A review of the sample submitted reveals that the "reembroidery" process substantially changes the appearance of the lace by imparting significant new characteristics to the lace.

Issue:

Whether the "reembroidery" operation described above qualifies as a repair or alteration under subheading 9802.00.50, HTSUS.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a partial duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 10.8, Customs Regulations (19 CFR 10.8), are satisfied.

Court cases considering the applicability of subheading 9802.00.50, HTSUS, and its precursor provisions (item 806.20, Tariff Schedules of the United States (TSUS), and, before that, paragraph 1615(g), Tariff Act of 1930), have held that this tariff provision is inapplicable where: (1) the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture.

In Guardian Industries v. United States, 3 CIT 9 (1982), the Court of International Trade stated that, in construing "the tariff provision for repairs and alterations performed abroad, the focus is upon whether the exported article is 'incomplete' or 'unsuitable for its intended use' prior to the foreign processing." At issue in Guardian Industries was the question of whether subjecting U.S.-produced annealed glass to a tempering process in Canada to create glass for sliding glass patio doors qualifies as an "alteration" under item 806.20, TSUS. The court noted that glass must be tempered (i.e., strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it may be marketed for use in sliding glass patio doors. In concluding that the tempering process was not an "alteration", the court stated that "the exported articles of raw annealed glass were not 'completed articles' since they were entirely unsuitable for their intended use" as sliding glass patio doors and required a manufacturing process to make them complete. The court further concluded that, because the tempering of the annealed glass

transformed the glass in name, use, performance characteristics and tariff classification, the operation created a new and different commercial article.

Similarly, in *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F.Supp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as griege goods for heat-setting, chemical-scouring, dyeing, and treating with chemicals, were eligible for the partial duty exemption available under item 806.20, TSUS, when returned to the United States. The U.S. Court of Customs and Patent Appeals found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated (66 CCPA at 82) that:

... repairs and alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles. In the instant situation, the operations performed in Canada comprise further processing steps which are performed on unfinished goods and which lead to completed articles, i.e., the finished fabrics, and, therefore, the processing cannot be considered alterations.

In Amity Fabrics, Inc. v. United States, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of paragraph 1615(g) of the Tariff Act of 1930.

In Royal Bead Novelty Co. v. United States, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, TSUS.

In HRL 557161, dated June 28, 1993, Customs considered whether wooden interior shutters exported to Mexico for certain operations, including the application of several coats of paint or stain, were eligible for subheading 9802.00.50, HTSUS, treatment when returned to the U.S. The manufacturer also sold shutters in an "unfinished" condition; that is, without any paint or stain applied. Customs found that the shutters in their condition as exported from the U.S. (unfinished) were complete for their intended use to control light, ventilation, and to provide privacy, and that the painting or staining was not a necessary step in the production of the shutters. Therefore, Customs determined that the returned shutters were eligible for the partial duty exemption under subheading 9802.00.50, HTSUS. In making that determination, Customs also modified a past ruling, HRL 555093, dated April 26, 1989, to the extent that it disallowed subheading 9802.00.50, HTSUS, treatment for wooden furniture kits also sold in an unfinished condition and sent abroad for staining and lacquering.

Although Customs issued a notice in the September 6, 1995, Customs Bulletin (Volume 29, Number 36) proposing to modify HRL 557161 to reflect that the painting or staining abroad of unfinished interior shutters, and the staining and lacquering abroad of furniture kits under HRL 555093, would not be considered alterations under subheading 9802.00.50, HTSUS, this proposed action was withdrawn in a notice published on December 17, 1997, in the Customs Bulletin, Volume 31, Number 51. Thus, it remains Customs position that the painting or staining of the shutters in HRL 557161 and the staining and lacquering of the wooden furniture kits in HRL 555093 constitute permissible alterations under subheading 9802.00.50, HTSUS.

HRL 560325 dated January 27, 1998, concerned the eligibility for subheading 9802.00.50, HTSUS, treatment of U.S.-origin glass stemware which was decorated by a silkscreening process with a pictorial winter scene abroad and returned. The

stemware was offered for sale both in its decorated and undecorated state. In holding that the decorating process constituted an alteration, Customs stated that:

... the processing abroad results only in a change to the appearance of the stemware, and does not alter the function, character or identity of the exported articles. The merchandise sent is finished white wine stemware, marketable in the condition exported, and what is returned is the same merchandise, available to the same class of customers, albeit enhanced in appearance by a decorative winter scene.

HRL 557659 dated January 27, 1994, concerned whether U.S.-origin Jacquard curtain fabric which is exported to Mexico for processing described as "air brushing and hot-wire cutting" qualifies for subheading 9802.00.50 treatment when returned to the U.S. During the air brushing operation, decorative motifs existing in the pattern of the fabric (such as flowers, leaves, etc.) are isolated by a stencil and paint is applied to them. This enhances the design, which is inherent in the fabric. Hotwire cutting traces the contours of already existing decorative lines in the fabric to make the effect of the lines more dramatic. The record before Customs in the case indicated that 95% of the Jacquard curtain fabric was sold in the U.S. without the air brushing or hot-wire cutting operations.

Customs stated in HRL 557659 that the fact that the fabric in its exported condition is marketed as fabric for curtains, and is marketed for the same use after the air brushing and hot-wire cutting operations, shows that the fabric before the processing is suitable for its intended use and that it is exported in a completed condition. We further stated that, although the foreign operations slightly change the appearance of the fabric, they do not significantly change the quality, character or performance characteristics of the fabric. Accordingly, Customs found that the air brushing and hot-wire cutting constitute acceptable alterations under subheading 9802.00.50, HTSUS.

We believe that the holdings in HRLs 557161, 560325, and 557659 are controlling with respect to the facts in the instant case. Lace is exported for a "reembroidery process, which involves hand embroidering various combinations of rope (thick thread), sequins and beads onto the lace. Information in the record indicates that both the lace in its condition as exported and the returned "reembroidered" lace are sold in the same channels of trade for use as ornamentation on women's wearing apparel. We view this as persuasive evidence that the lace in its exported condition is complete for its intended use as wearing apparel ornamentation and, therefore, that the foreign "reembroidery" operation is not a necessary step in the preparation or manufacture of finished lace. Moreover, while hand embroidering rope, sequins and/or beads onto the lace clearly imparts new decorative characteristics to the product, this change in the appearance of the article clearly does not result in the loss of the good's identity or the creation of a new article with a different commercial The foreign processing does not significantly change the quality, character or performance characteristics of the lace. Therefore, we find that the foreign 'reembroidery" operation constitutes an alteration within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information presented, we find that the foreign "reembroidery" operation, as described above, performed abroad on exported lace qualifies as an alteration under subheading 9802.00.50, HSTSUS. Therefore, the returned "reembroidered" lace is entitled to the partial duty exemption under this tariff provision, provided the documentation requirements of 19 CFR 10.8 are met.

vision, provided the documentation requirements of 19 CFR 10.8 are met. HRL 558935 is hereby modified consistent with the foregoing. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Sincerely,

Myles Harmon (For John Durant, Director Commercial Rulings Division)

[Attachment d]

HQ 561770 September 19, 2000 CLA-2-05 RR:CR:SM 561770 CW Category: Classification Tariff No.: 9802.00.50

Mr. Douglas Davidson Joliette Porcelain, Incorporated 516 rue Cartier Joliette, Quebec J6E 4T7

RE: Revocation of HRL 560168; alteration; decoration of ceramic dinnerware

DEAR MR. DAVIDSON:

This is in reference to Headquarters Ruling Letter (HRL) 560168 dated February 28, 1997, which was issued to you concerning the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to the foreign decoration of certain ceramic dinnerware. We have reviewed this ruling and have determined that its conclusion that subheading 9802.00.50, HTSUS, is inapplicable to the returned dinnerware is incorrect. Therefore, HRL 560168 is revoked for the reasons set forth below.

Facts:

Joliette Porcelain, Incorporated (Joliette), exports blank dinnerware products from the U.S. to Canada where ceramic decals are applied and, in some cases, bands are painted onto the articles. After the decorating process, the dinnerware is kiln fired and then returned to the U.S. Alternatively, the dinnerware may be decorated by an "over-the-glaze" application of decals and/or painted bands. You state that the undecorated dinnerware, which is produced by the Pfaltzgraf Company, is sold in that condition in the U.S. marketplace.

Samples of the dinnerware before and after the decorating process were submitted for our examination.

In HRL 560168, Customs held that subjecting blank dinnerware to the above-described decorating processes in Canada, followed by kiln firing, constitute operations that exceed a repair or alteration under subheading 9802.00.50, HTSUS. Customs determined that the foreign processing imparted substantially new and different characteristics to the dinnerware. Customs found that the application of a particular design on the dinnerware items gave them a unique and specialized appeal, and was a prerequisite to marketing and selling the finished decorative dinnerware in the United States. Thus, Customs viewed the exported dinnerware as incomplete for its intended use and the foreign processing as a necessary step in the production of the final article--decorative dinnerware.

Issue:

Whether the decorating operations described above qualify as a repair or alteration under subheading 9802.00.50, HTSUS.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a partial or complete duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 181.64 (for articles returned from Canada or Mexico) or section 10.8 (for articles returned from any other country), Customs Regulations (19 CFR 181.64 and 10.8), are satisfied.

Section 181.64(a), Customs Regulations, states that:

'repairs or alterations' means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

Court cases considering the applicability of subheading 9802.00.50, HTSUS, and its precursor provisions (item 806.20, Tariff Schedules of the United States (TSUS),

and, before that, paragraph 1615(g), Tariff Act of 1930), have held that this tariff provision is inapplicable where: (1) the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture.

In Guardian Industries v. United States, 3 CIT 9 (1982), the Court of International Trade stated that, in construing "the tariff provision for repairs and alterations performed abroad, the focus is upon whether the exported article is 'incomplete' or 'unsuitable for its intended use' prior to the foreign processing." At issue in Guardian Industries was the question of whether subjecting U.S.-produced annealed glass to a tempering process in Canada to create glass for sliding glass patio doors qualifies as an "alteration" under item 806.20, TSUS. The court noted that glass must be tempered (i.e., strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it may be marketed for use in sliding glass patio doors. In concluding that the tempering process was not an "alteration", the court stated that "the exported articles of raw annealed glass were not completed articles' since they were entirely unsuitable for their intended use" as sliding glass patio doors and required a manufacturing process to make them complete. The court further concluded that, because the tempering of the annealed glass transformed the glass in name, use, performance characteristics and tariff classification, the operation created a new and different commercial article.

Similarly, in *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F.Supp. 618 (1978), *aff'd*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as griege goods for heat-setting, chemical-scouring, dyeing, and treating with chemicals, were eligible for the partial duty exemption available under item 806.20, TSUS, when returned to the United States. The U.S. Court of Customs and Patent Appeals found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated (66 CCPA at 82) that:

... repairs and alterations are made to completed articles and do not include intermediate processing operations which are performed as a matter of course in the preparation or manufacture of finished articles. In the instant situation, the operations performed in Canada comprise further processing steps which are performed on unfinished goods and which lead to completed articles, i.e., the finished fabrics, and, therefore, the processing cannot be considered alterations.

In Amity Fabrics, Inc. v. United States, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of paragraph 1615(g) of the Tariff Act of 1930.

In Royal Bead Novelty Co. v. United States, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, TSUS.

In HRL 557161, dated June 28, 1993, Customs considered whether wooden interior shutters exported to Mexico for certain operations, including the application of several coats of paint or stain, were eligible for subheading 9802.00.50, HTSUS, treatment when returned to the U.S. The manufacturer also sold shutters in an "unfinished" condition; that is, without any paint or stain applied. Customs found that the shutters in their condition as exported from the U.S. (unfinished) were

complete for their intended use to control light, ventilation, and to provide privacy, and that the painting or staining was not a necessary step in the production of the shutters. Therefore, Customs determined that the returned shutters were eligible for the partial duty exemption under subheading 9802.00.50, HTSUS. In making that determination, Customs also modified a past ruling, HRL 555093, dated April 26, 1989, to the extent that it disallowed subheading 9802.00.50, HTSUS, treatment for wooden furniture kits also sold in an unfinished condition and sent abroad for staining and lacquering.

Although Customs issued a notice in the September 6, 1995, Customs Bulletin (Volume 29, Number 36) proposing to modify HRL 557161 to reflect that the painting or staining abroad of unfinished interior shutters, and the staining and lacquering abroad of furniture kits under HRL 555093, would not be considered alterations under subheading 9802.00.50, HTSUS, this proposed action was withdrawn in a notice published on December 17, 1997, in the Customs Bulletin, Volume 31, Number 51. Thus, it remains Customs position that the painting or staining of the shutters in HRL 557161 and the staining and lacquering of the wooden furniture kits in HRL 555093 constitute permissible alterations under subheading 9802.00.50, HTSUS.

HRL 560325 dated January 27, 1998, concerned the eligibility for subheading 9802.00.50, HTSUS, treatment of U.S.-origin glass stemware which was decorated by a silkscreening process with a pictorial winter scene abroad and returned. The stemware was offered for sale both in its decorated and undecorated state. In holding that the decorating process constituted an alteration, Customs stated that:

. . . the processing abroad results only in a change to the appearance of the stemware, and does not alter the function, character or identity of the exported articles. The merchandise sent is finished white wine stemware, marketable in the condition exported, and what is returned is the same merchandise, available to the same class of customers, albeit enhanced in appearance by a decorative winter scene.

We believe that the holdings in HRLs 560325 and 557161 are controlling with respect to facts presented in the instant case. Blank dinnerware is exported to Canada where ceramic decals or painted bands are applied, after which the articles are kiln fired and then returned to the U.S. The facts submitted in the case indicate that both the decorated and undecorated dinnerware are marketed to consumers for the same use. We view this as persuasive evidence that the dinnerware in its exported condition is complete for its intended use and, therefore, that the foreign processing is not a necessary step in the production or manufacture of finished articles. While the application of decals or painted bands to the dinnerware in Canada clearly imparts new decorative characteristics to the articles, this enhanced appearance does not result in the loss of the goods' identity or the creation of new articles with a different commercial use. The foreign processing does not significantly change the quality, character or performance characteristics of the dinnerware. Therefore, we find that the decorative processing operations performed on the dinnerware in Canada qualifies as an alteration within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information presented, we find that the decorating operations described above performed abroad on exported blank dinnerware constitute an alteration under subheading 9802.00.50, HTSUS. Therefore, the returned decorated dinnerware is entitled to the partial duty exemption under this tariff provision, provided the documentation requirements of 19 CFR 181.64 are met.

Consistent with this ruling, HRL 560168 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Sincerely,

Myles Harmons (For John Durant, Director Commercial Rulings Division)